



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2003 Wisconsin Act 235 [2003 Assembly Bill 868]	Livestock Facility Siting
2003 Acts: www.legis.state.wi.us/2003/data/acts/	Act Memos: www.legis.state.wi.us/lc/act_memo/act_memo.htm

The establishment of a new or the expansion of an existing livestock facility may be subject to regulation by a political subdivision (city, village, town, or county). A livestock facility is a place where animals used in the production of food, fiber, or other animal products are confined. A political subdivision may regulate livestock facilities through its zoning ordinance or through other regulations. 2003 Wisconsin Act 235 creates a framework of statutes and administrative rules to define appropriate local regulations regarding the siting and expansion of livestock facilities.

The framework for applying local zoning ordinances to a livestock facility siting or expansion is set forth in the statutory language of Act 235. (Local zoning ordinances primarily determine where a use of land, such as a livestock facility, may be established, expanded, or maintained.) The framework for local regulation of livestock facility siting or expansion other than by zoning will be established by rule by the Department of Agricultural, Trade and Consumer Protection (DATCP). (These other regulations relate primarily to how a livestock facility is constructed and operated.)

Act 235 directs DATCP to establish “state standards” for livestock facilities that will provide the framework for local regulation (other than zoning) of livestock facilities. The state standards will relate to such matters as best management practices and performance standards for a livestock facility. The state standards will include existing standards for livestock facilities that are adopted by cross-reference and new standards developed specifically for this purpose by DATCP. Any new standards promulgated by DATCP must be protective of public health and safety, cost-effective, based on available scientific information that has been subjected to peer review, designed to promote animal agriculture, and designed to balance the economic viability of farm operations with natural resources protection and community interests. DATCP is directed to review the state standards at least once every four years. DATCP is also directed to appoint a committee of experts to advise in the promulgation and review of the rules, and to promulgate the initial rules within 12 months after the effective date of the Act (which is April 28, 2004).

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents.

The basic concept of Act 235 is that a political subdivision may not disapprove or prohibit a livestock facility siting or expansion unless the political subdivision determines that at least one of the specific allowable reasons set forth in the statute for disapproval or prohibition of a livestock facility siting or expansion applies.

Act 235 authorizes a political subdivision to disapprove or prohibit a livestock facility siting or expansion under its ***zoning ordinance***, if any of the following apply:

- The site of the livestock facility is in a zoning district that is not an agricultural zone.
- The site is located in an agricultural zoning district and the proposed new or expanded livestock facility is prohibited. However, if a smaller livestock facility would be allowed in that zone, the political subdivision must also have an agricultural zone elsewhere within its jurisdiction where livestock facilities are permitted with no limit on size.
- The proposed livestock facility siting or expansion violates shoreland, floodplain, wetlands, or storm water zoning ordinances.

Act 235 authorizes a political subdivision to apply the ***state standards*** or ***local regulations*** to disapprove or prohibit a livestock facility siting or expansion if the facility will have 500 or more animal units (an animal unit is the number of livestock with waste production equivalent to one beef steer) and any of the following apply:

- The facility does not comply with the state standards.
- The facility violates a requirement adopted by the political subdivision that is more stringent than the state standards if the political subdivision makes specific findings of fact to show that the requirement is necessary for public health or safety, is based on reasonable and scientifically defensible findings of fact, and is adopted before the application is submitted.

Under limited circumstances, based on preexisting ordinances, a political subdivision can disapprove or prohibit proposed siting or expansion that will be less than 500 animal units, using the state standards or more stringent local regulations.

Act 235 requires political subdivisions to take action on applications for approval of a livestock facility siting or expansion within set time periods. The political subdivision must determine that an application is complete or that more information is needed within 45 days after receiving the application. The political subdivision must either approve or disapprove the application no more than 90 days after determining that the application is complete. The approval time limit may be extended for cause.

Act 235 creates a livestock facility siting review board, which is attached to DATCP. This seven-member board, upon appeal by an aggrieved person, reviews the hearing record and written materials considered by the political subdivision in making its decision to approve or disapprove the application. The livestock facility siting review board determines whether the political subdivision correctly applied the state standards and based its decision to approve or disapprove the application on any of the allowable reasons under Act 235. An “aggrieved person” is the applicant or a person who lives within two miles of the livestock facility or owns land within two miles of the livestock facility. The board must make its decision within 60 days after receiving a certified copy of the record of the political subdivision’s decision. If it determines that the challenge is valid, the board reverses the decision of the political subdivision.

The decision of the siting review board may be appealed to circuit court, which bases its review on the evidence in the record prepared by the political subdivision.

Effective Date: The Act takes effect on April 28, 2004.

Prepared by: Mark C. Patronsky, Senior Staff Attorney

April 27, 2004

MCP:rv:jal:ksm